



H.R. 5719 – The Taxpayer Assistance and Simplification Act of 2008

EXECUTIVE SUMMARY

H.R. 5719 was introduced by Representative Charles Rangel (D-NY) and approved by the Committee on Ways and Means in a party line vote of 23 to 17 on April 9, 2008. It will be considered on the floor under a closed rule on April 15, 2008.

Several provisions incorporated into H.R. 5719 (including an EITC provision, an identity theft provision, and wrongful levy provisions) previously passed the House as part of H.R. 1677, which the House approved by a vote of 407 to 7. H.R. 5719, however, also includes highly contentious provisions relating to private debt collection and health savings accounts. Specifically, the bill would eliminate the Internal Revenue Service's ability to utilize private debt collection companies. It would also impose substantiation requirements for withdrawing money from Health Savings Accounts (HSAs).

The Administration stated that the President's senior advisors would recommend he veto the bill because of concerns with the private debt collection and HSA provisions.

The Congressional Budget Office and the Joint Committee on Taxation estimate "that enacting H.R. 5719 would increase revenues by \$41 million and reduce direct spending by \$247 million over the 2008-2018 period."

FLOOR SITUATION

H.R. 5719 is being considered on the floor under a closed rule. The Rule:

- Provides one hour of debate equally divided and controlled by the Chairman and Ranking Republican Member of the Committee on Ways and Means.
- Waives all points of order against consideration of the bill except for clauses 9 (earmarks) and 10 (PAYGO) of rule XXI.
- Provides that the substitute amendment recommended by the Ways and Means Committee now printed in the bill shall be considered as adopted and the bill, as amended, shall be considered as read.
- Waives all points of order against provisions of the bill, as amended. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).
- Provides one motion to recommit with or without instructions.

This legislation was introduced by Representative Charles Rangel (D-NY) on April 8, 2008. The House Ways and Means Committee approved the bill, as amended, by a vote of 23 to 17 on April 9, 2008.

H.R. 5719 is expected to be considered on the House floor on April 15, 2008.



SUMMARY

Modification of Penalties on Tax Return Preparers: The bill modifies the penalties on tax return preparers for understating tax liability to align with those for taxpayers. It sets the penalty at \$1,000 or 50 percent of the amount paid to the preparer for doing the return, whichever is greater. The three standards for identifying understated tax liability are: 1) undisclosed amounts without substantial authority to verify it; 2) disclosed amounts must have a reasonable basis for it; and 3) tax shelters and certain reportable transactions must more likely than not be sustained on the merits. The penalty modifications apply to returns after May 25, 2007, for the first two standards and after enactment for the third standard.

Revoking the IRS' Authority to Enter Into Contracts With Private Tax Collectors: H.R. 5719 repeals the Internal Revenue Service's (IRS) authority to enter into contracts with private debt collectors, effective July 18, 2007. Any contracts entered into before that date are not authorized to be renewed or extended, and any contracts entered into after that date will be void.

- o Cost: The Joint Committee on Taxation (JCT) estimated that an identical provision contained in H.R. 3056, which passed in the House by a vote of 232 - 173 ([Roll no. 960](#)) on October 10, 2007, would **reduce** federal revenues by \$1.3 billion over the 2008-2017 period. It was also included in the first version of H.R. 3996, which passed the House by a vote of 216 - 193 ([Roll no. 1081](#)) on November 9, 2007. The provision was stripped from the final version of H.R. 3996, which was signed into law on December 26, 2007 (P.L. 110-166).

Note: Republicans on the Ways and Means Committee "strongly oppose [this] provision killing the private collection agency program." Republicans have stated that hearings on the issue revealed that "tax liabilities assigned to PCAs [Private Collection Agencies] for collection would otherwise go uncollected even if the IRS had a greater enforcement budget." Also in the hearings it was found that private debt collection firms are currently "successfully collecting millions of dollars in unpaid taxes that the IRS would not otherwise pursue."

Removal of Cell Phones from Listed Property: The bill removes the requirement that individuals maintain detailed records of their employer-provided cell phone usage to prove it was a business expense.

Taxpayer Notification of Suspected Identity Theft: The bill requires the Treasury Secretary to notify taxpayers who are suspected victims of identity theft (including notification when the perpetrator is charged) as soon as it's feasible.

Earned Income Tax Credit Outreach: H.R. 5719 requires the IRS to notify, to the extent possible, potential Earned Income Tax Credit (EITC) taxpayers of both the availability of the EITC for all open tax years for which a tax return was not filed and any unclaimed refunds resulting from wages withheld.

Extension of Time for Return of Property for Wrongful Levy: The bill extends the time frame available for claimants to seek a return of property they charge was wrongfully levied by the IRS from 9 months to 2 years.

Prohibition on misuse of Department of Treasury names and symbols: The bill includes language ensuring that the use of misleading Internet domain names and blast emails that pose as the Department of Treasury or related agencies are punishable under the current civil and criminal penalties.

Substantiation requirements for Health Savings Accounts: The bill requires individuals using health savings accounts (HSAs) to provide documentation of their medical expenses in order for each expense to qualify as tax-exempt. The provision would take effect for HSA distributions after December 31, 2010.



LEGISLATIVE DIGEST

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Note: HSAs are high deductible health plans that can be used for out-of-pocket medical expenses as well as future medical expenses on a tax-favored basis. According to Ways and Means Committee Republicans, these provisions “could have the unintended of pushing some HSA custodians away from a paperless health care system” and “could lead to a reduction in the number of people in HSAs.”

Tax Treatment of Certain Persons Performing Services Under Contract with the U.S. Government: The bill requires U.S. firms to treat all foreign-based employees that are working on U.S. Government contracts as American employees (and therefore subject to American taxes), even if the work is being done through a foreign subsidiary.

BACKGROUND

The House Ways and Means Committee approved H.R. 5719 along party lines on April 9, 2008. Several provisions incorporated into H.R. 5719 (including the EITC provision, the identity theft provision, and the wrongful levy provisions) previously passed the House as part of H.R. 1677, which passed the House by a vote of 407 to 7. H.R. 5719, however, also includes highly contentious provisions relating to private debt collection and health savings accounts. The Democrats have tried a number of times during the 110th Congress to enact legislation eliminating private debt collection, including in H.R. 3056 and H.R. 3996.

Private Debt Collection

In testimony before the Ways and Means Committee on May 23, 2007, the GAO reported that an estimated \$132 billion in delinquent tax debt that had “some collection potential” went uncollected in 2005. Congress authorized the IRS to contract with private debt collection companies with passage of the American Jobs Creation Act of 2004 (P.L. 108-357). The IRS contracted with private collection agencies (PCAs) in 2006 and established a process where the IRS first sends notification letters to affected taxpayers notifying them that their cases are being handled by a PCA. The PCAs then notify the taxpayers of their collection efforts in a letter, and finally the PCAs are then allowed to contact the taxpayers by telephone.

Under the program, the IRS may retain up to 25% of the amount collected for additional collection enforcement activities, including the hiring of additional workers. According to the IRS, as of March 20, 2008, PCAs have helped collect \$49.26 million in tax debts, and the IRS has retained \$9.38 million of the collected funds for additional enforcement activities as of March 15, 2008. The GAO reports that PCAs do not actually collect the tax debts, but instruct taxpayers to forward payments to the IRS. And the IRS reports that the PCAs are paid on a “fee-for-service” basis averaging approximately 17 percent of the tax debt collected.

Health Savings Accounts (HSAs)

HSAs were first created as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173), which was signed into law by President Bush on December 8, 2003. HSAs are high deductible health plans that can be used for out-of-pocket medical expenses as well as future medical expenses on a tax-favored basis. The accounts are intended to promote savings by individuals and families for health care expenses and give individuals financial stake in health care spending.

ADDITIONAL VIEWS

Ways and Means Committee Republicans: “The tax gap, estimated at nearly \$300 billion per year, can’t be closed by waving a magic wand. Rather, ensuring that all taxes owed are actually paid requires many small steps to target facets of the problem. By terminating a proven method of ensuring all



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Americans pay their fair share, H.R. 5719 takes a giant step in the opposite direction. In addition, the juxtaposition between the repeal of the PCA program and imposing new burdensome HSA substantiation requirements reveals the fickle and inconsistent nature of the Majority. The Majority objects to the IRS using private collection agencies yet they want the IRS to “employ” private administrators to review the health spending of HSA enrollees? Surely the irony is not lost on us.” (Dissenting Views of the Committee Report for H.R. 5719)

Administration: “The bill includes provisions that would impose new administrative burdens on the trustees of Health Savings Accounts (HSAs). These new burdens on HSA administrators are unnecessary for efficient tax administration, inconsistent with the flexibility purposely afforded HSAs at their inception, and could undermine efforts by employers, individuals, and insurers to reduce health care costs and improve health outcomes by empowering consumers to take greater control of health care decision-making... Also, the Administration strongly opposes the provisions of the bill that would repeal the current statutory authorization for the Internal Revenue Service (IRS) private debt collection program. As of February 2008, over 98,000 cases have been referred to contractors, representing over \$910 million in delinquent accounts...If H.R. 5719 were presented to the President with these provisions, his senior advisors would recommend that he veto the bill.” (Statement of Administration Policy, 4/14/08)

COST

The Congressional Budget Office and the Joint Committee on Taxation estimate “that enacting H.R. 5719 would increase revenues by \$41 million and reduce direct spending by \$247 million over the 2008-2018 period.” ([Cost Estimate for H.R. 5719](#))

STAFF CONTACT

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